Affidavit

STATE OF WEST VIRGINIA,
COUNTY OF CABELL, to-wit:

On this 31st day of January, 1967 personally appeared before the undersigned authority, HAZEL FULTON, who being by me first duly sworn states and says that she resides at 808 Twelfth Street, Kenova, Wayne County, West Virginia; affiant further says that she has for some time been disturbed and distraught; that in the years 1963 and 1964 she was subjected to a great deal of attention and considerable interrogation by agents of the Federal Bureau of Investigation and members of the United States Justice Department; affiant further says that in the final analysis she believed she was doing her country a great patriotic favor and was convinced that she was protecting herself during said time from Jimmy Hoffa's International Brotherhood of Teamsters Union, but now after considerable thought she now realizes that she was misinformed, influenced and coerced and that a great injustice occurred; that she has been greatly disturbed and has worried a great deal about her participation in the whole affair; affiant says that she desires to make a statement at this time to attorney William Flesher in Huntington, West Virginia, who, as far as she knows, has no connection with either the United States Justice Department or with the International Brotherhood of Teamsters Union; that she had read and heard that Mr. Hoffa's attorney has offered a reward for information about phone tapping in the Hoffa case in Tennessee; that she feels that this is her opportunity to tell her experiences in connection with the Hoffa case in Tennessee.

Affiant further says that in the year 1962 she was employed as a bookkeeper at the Mayflower Distributing Company in Huntington, West Virginia; that in November of that year Mr. Nicholas Tweel came to the company to assist in selling the business for his brother, Mr. Sam

ant and her lawyer before and during trial. In *Caldwell*, the agent, "in his dual capacity as defense assistant and Government agent . . . gained free access to the planning of the defense. . . . Neither his dealings with the defense nor his reports to the prosecution were limited to the proposed unlawful acts of the defense: they covered many matters connected with the impending trial." 205 F. 2d, at 880.

We may assume that the *Coplon* and *Caldwell* cases were rightly decided, and further assume, without deciding, that the Government's activities during the Test Fleet trial were sufficiently similar to what went on in *Coplon* and *Caldwell* to invoke the rule of those decisions. Consequently, if the Test Fleet trial had resulted in a conviction instead of a hung jury, the conviction would presumptively have been set aside as constitutionally defective. Cf. *Black* v. *United States*, — U. S. —.

But a holding that it follows from this presumption that the petitioner's conviction in the present case should be set aside would be both unprecedented and irrational. In *Coplon* and in *Caldwell*, the Court of Appeals held that the Government's intrusion upon the defendant's relationship with his lawyer "invalidates the trial at which it occurred." 191 F. 2d, at 759; 205 F. 2d, at 881. In both of those cases the court directed a new trial,* and the second trial in *Caldwell* resulted in a conviction which this Court declined to review. 218 F. 2d 370, 349 U. S. 926. The argument here, therefore, goes far beyond anything decided in *Caldwell* or in *Coplon*. For if the petitioner's argument were accepted, not only could there have been no new conviction on the existing charges in

* In *Coplon*, the grant of a new trial was conditioned on the defendant's proof of her wiretapping allegations.

Caldwell, but not even a conviction on other and different charges against the same defendant.

It is possible to imagine a case in which the prosecution might so pervasively insinuate itself into the councils of the defense as to make a new trial on the same charges impermissible under the Sixth Amendment.[10] But even if it were further arguable that a situation could be hypothesized in which the Government's previous activities in undermining a defendant's Sixth Amendment rights at one trial would make evidence obtained thereby inadmissible in a different trial on other charges, the case now before us does not remotely approach such a situation.

This is so because of the clinching basic fact in the present case that none of the petitioner's incriminating statements which Partin heard were made in the presence of counsel, in the hearing of counsel, or in connection in any way with the legitimate defense of the Test Fleet prosecution. The petitioner's statements related to the commission of a quite separate offense—attempted bribery of jurors—and the statements were made to Partin out of the presence of any lawyers.

Even assuming, therefore, as we have, that there might have been a Sixth Amendment violation which might have made invalid a conviction, if there had been one, in the Test Fleet case, the evidence supplied by Partin in the present case was in no sense the "fruit" of any such violation. In *Wong Sun* v. *United States*, 371 U. S. 471, a case involving exclusion of evidence under

[10] In the *Caldwell* case, the Court of Appeals implicitly recognized the possibility of a case arising in which a showing could be made of "prejudice to the defense of such a nature as would necessarily render a subsequent trial unfair to the accused." 205 F. 2d 879, 881–882, n. 11.

the Fourth Amendment, the Court stated that "the more apt question in such a case is 'whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint.' Maguire, Evidence of Guilt, 221 (1959)." 371 U. S., at 488.

Even upon the permise that this same strict standard of excludability should apply under the Sixth Amendment—a question we need not decide—it is clear that Partin's evidence in this case was not the consequence of any "exploitation" of a Sixth Amendment violation. The petitioner's incriminating statements to which Partin testified in this case were totally unrelated in both time and subject matter to any assumed intrusion by Partin into the conferences of the petitioner's counsel in the Test Fleet trial. These incriminating statements, all of them made out of the presence or hearing of any of the petitioner's counsel, embodied the very antithesis of any legitimate defense in the Test Fleet trial.

B.

The petitioner's second argument under the Sixth Amendment needs no extended discussion. That argument goes as follows: Not later than October 25, 1962, the Government had sufficient ground for taking the petitioner into custody and charging him with endeavors to tamper with the Test Fleet jury. Had the Government done so, it could not have continued to question the petitioner without observance of his Sixth Amendment right to counsel. *Massiah* v. *United States*, 377 U. S. 201; *Escobedo* v. *Illinois*, 378 U. S. 478. Therefore, the argument concludes, evidence of statements

made by the petitioner subsequent to October 25 was inadmissible, because the Government acquired that evidence only by flouting the petitioner's Sixth Amendment right to counsel.

Nothing in *Massiah*, in *Escobedo*, or in any other case that has come to our attention, even remotely suggests this novel and paradoxical constitutional doctrine, and we decline to adopt it now. There is no constitutional right to be arrested.[11] The police are not required to guess at their peril the precise moment at which they have probable cause to arrest a suspect, risking a violation of the Fourth Amendment if they act too soon, and a violation of the Sixth Amendment if they wait too long. Law enforcement officers are under no constitutional duty to call a halt to a criminal investigation the moment they have the minimum evidence to establish probable cause, a quantum of evidence which may fall far short of the amount necessary to support a criminal conviction.

IV.

Finally, the petitioner claims that even if there was no violation—"as separately measured by each such Amendment"—of the Fourth Amendment, the compulsory self-incrimination clause of the Fifth Amendment, or of the Sixth Amendment in this case, the judgment of conviction must nonetheless be reversed. The argument is based upon the Due Process Clause of the Fifth Amendment. The "totality" of the Government's conduct during the Test Fleet trial operated, it is said, to "'offend those canons of decency and fairness which express the notions of justice of English-speaking peoples

[11] We put to one side the extraordinary problems that would have arisen if the petitioner had been arrested and charged during the progress of the Test Fleet trial.

even toward those charged with the most heinous offenses' (*Rochin* v. *California*, 342 U. S. 165, 169)."

The argument boils down to a general attack upon the use of a government informer as "a shabby thing in any case," and to the claim that in the circumstances of this particular case the risk that Partin's testimony might be perjurious was very high. Insofar as the general attack upon the use of informers is based upon historic "notions" of "English-speaking peoples," it is without historical foundation. In the words of Judge Learned Hand, "Courts have countenanced the use of informers from time immemorial; in cases of conspiracy, or in other cases when the crime consists of preparing for another crime, it is usually necessary to rely upon them or upon accomplices because the criminals will almost certainly proceed covertly. . . ." *United States* v. *Dennis*, 183 F. 2d 201, at 224.

This is not to say that a secret government informer is to the slightest degree more free from all relevant constitutional restrictions than is any other government agent. See *Massiah* v. *United States*, 377 U. S. 201. It *is* to say that the use of secret informers is not *per se* unconstitutional.

The petitioner is quite correct in the contention that Partin, perhaps even more than most informers, may have had motives to lie. But it does not follow that his testimony was untrue, nor does it follow that his testimony was constitutionally inadmissible. The established safeguards of the Anglo-American legal system leave the veracity of a witness to be tested by cross-examination, and the credibility of his testimony to be determined by a properly instructed jury. At the trial of this case, Partin was subjected to rigorous cross-examination, and the extent and nature of his dealings with federal and state authorities was insistently ex-

plored.[12] The trial judge instructed the jury, both specifically [13] and generally,[14] with regard to assessing Partin's credibility. The Constitution does not require us to upset the jury's verdict.

Affirmed.

MR. JUSTICE WHITE and MR. JUSTICE FORTAS took no part in the consideration or decision of these cases.

---

[12] Partin underwent cross-examination for an entire week. The defense was afforded wide latitude to probe Partin's background, character, and ties to the authorities; it was permitted to explore matters that are normally excludable, for example, whether Partin had been charged with a crime in 1942, even though that charge had never been prosecuted.

[13] The judge instructed the jury that it was petitioner's contention that he "did not invite Edward Partin to come to Nashville, Tennessee, during the trial of [the Test Fleet case] but that the said Edward Partin came of his own accord under the pretense of attempting to convince Mr. Hoffa that the Teamsters local union in Baton Rouge, Louisiana should not be placed in trusteeship by reason of Partin's being under indictment and other misconduct on Partin's part, but for the real purpose of fabricating evidence against Hoffa in order to serve his own purposes and interests."

[14] The jury was instructed: "You should carefully scrutinize the testimony given and the circumstances under which each witness has testified, and every matter in evidence which tends to indicate whether the witness is worthy of belief. Consider each witness' intelligence, his motives, state of mind, his demeanor and manner while on the witness stand. Consider also any relation each witness may bear to either side of the case . . . . All evidence of a witness whose self-interest is shown from either benefits received, detriments suffered, threats or promises made, or any attitude of the witness which might tend to prompt testimony either favorable or unfavorable to the accused should be considered with caution and weighed with care."

SUPREME COURT OF THE UNITED STATES

Nos. 32, 33, 34, AND 35.—OCTOBER TERM, 1966.

James R. Hoffa, Petitioner,
32 v.
United States.

Thomas Ewing Parks, Petitioner,
33 v.
United States.

Larry Campbell, Petitioner,
34 v.
United States.

Ewing King, Petitioner,
35 v.
United States.

On Writs of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[December 12, 1966.]

MR. JUSTICE CLARK, joined by MR. JUSTICE DOUGLAS.

I would dismiss the writs of certiorari as improvidently granted.

The writs of certiorari granted by the Court in these cases are limited to the following question:

> "Whether evidence obtained by the Government by means of deceptively placing a secret informer in the quarters and councils of the defendant during one criminal trial so violates the defendant's Fourth, Fifth and Sixth Amendment rights that suppression of such evidence is required in a subsequent trial of the same defendant on a different charge."

My examination of the record reveals that at the hearing on petitioners' motion to suppress the evidence obtained by the informer, Partin, the District Judge found that

"The Government did not place this witness, Mr. Partin, in the defendant's midst, rather that he was knowingly and voluntarily placed in their midst by one of the defendants [Hoffa]." This specific finding was approved by the Court of Appeals as being "supported by substantial evidence and . . . not clearly erroneous." 349 F. 2d, at 36. No attack is made here on the findings.

It has long been the rule of this Court that it "cannot undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional showing of error." *Graver Manufacturing Co.* v. *Luide,* 336 U. S. 271, 275 (1949). My careful examination of the record shows that there is a choice here between two permissible views as to the weight of the evidence. The District Judge found the weight of the evidence to be with the Government and the Court of Appeals has approved his finding. I cannot say on this record that it is clearly erroneous.* *United States* v. *Yellow Cab Co.,* 338 U. S. 338, 342 (1949).

In the light of this finding, by which we are bound, there is no issue before us for decision since no evidence was "obtained by the Government by means of deceptively placing a secret informer in the quarters and councils of" petitioner Hoffa.

I would therefore dismiss the writs as improvidently granted.

*At one point the informer, Partin, testified: "Mr. Hoffa is the one who told me he wanted me to stick around." Petitioner's own witnesses testified that Partin was in the suite "virtually every day" as well as the "nightly meetings," had "ready access" to the files and offices and acted as "sergeant-at-arms" just outside the door of the suite. Hoffa did not testify at the hearing on the motion to suppress.

SUPREME COURT OF THE UNITED STATES

Nos. 32, 33, 34, AND 35.—OCTOBER TERM, 1966.

James R. Hoffa, Petitioner, 32 *v.* United States.	
Thomas Ewing Parks, Petitioner, 33 *v.* United States.	On Writs of Certiorari to the United States Court of Appeals for the Sixth Circuit.
Larry Campbell, Petitioner, 34 *v.* United States.	
Ewing King, Petitioner, 35 *v.* United States.	

[December 12, 1966.]

MR. CHIEF JUSTICE WARREN, dissenting.

I cannot agree either with the opinion of the Court affirming these convictions or with the separate opinions of MR. JUSTICE CLARK and MR. JUSTICE DOUGLAS to the effect that the writs of certiorari were improvidently granted.

I.

As to the latter, it seems to me that the finding of the District Court which so troubles my Brothers CLARK and DOUGLAS is in fact no roadblock to our review of the important questions presented by the petitions. It has long been settled that this Court will not be bound by the findings of lower courts when it is alleged that fundamental constitutional rights have been violated. *Jacobellis* v. *Ohio*, 378 U. S. 184 (1964); *Haynes* v. *Wash-*

ington, 373 U. S. 503 (1963); *Watts* v. *Indiana*, 328 U. S. 49 (1949); *Hooven & Allison* v. *Evatt*, 324 U. S. 652 (1945); *Norris* v. *Alabama*, 294 U. S. 587 (1935). We have said, "The duty of this Court to make its own independent examination of the record when federal constitutional deprivations are alleged is clear, resting, as it does, on our solemn responsibility for maintaining the Constitution inviolate." *Napue* v. *Illinois*, 360 U. S. 264, 271 (1959).

The finding in question here is not one which the District Judge arrived at by resolving contradictory testimony on the basis of credibility. Findings of fact based on crediting the testimony of some witnesses and discrediting the testimony of others may properly be accorded some insulation from appellate review because of the superior opportunity of the trial judge to observe the demeanor of the witnesses. In this case, however, the testimony concerning the circumstances surrounding Partin's entry into Hoffa's councils was not substantially in dispute. While those circumstances are set forth in greater detail *infra*, a brief summary discloses that Partin, after discussing Hoffa with federal agents and learning of their intense and mutually benefical interest, successfully solicited an invitation to meet with Hoffa. Partin's release from jail was assisted by the federal agents, and he was compensated in a financial sense as well; in return, he kept the federal agents fully informed of all that occurred from the outset of his contact with Hoffa.

Surely the only reasonable construction of these facts is that Partin was acting as a paid federal informer when he traveled to Nashville and attached himself to Hoffa. And the fact that Hoffa on Partin's urging agreed to a meeting in Nashville is not inconsistent with this conclusion. An invasion of basic rights made possible by prevailing upon friendship with the victim is no less proscribed than

an invasion accomplished by force. See *Massiah* v. *United States*, 377 U. S. 201 (1964); *Gouled* v. *United States*, 255 U. S. 298 (1921).

Moreover, at the time we granted the petitions for certiorari in these cases, we knew exactly what we know now. The findings of the District Court were in the record then before us, and no new facts to change the situation have since come to light. In short, there is nothing which should prevent us from facing up to the important questions presented and determing whether the convictions can stand either in light of the Constitution or under our power of supervision over the admistration of justice in federal courts.

II.

For me, this case and two others decided today (*Lewis* v. *United States*, *post*, p. —, and *Osborn* v. *United States*, *post*, p. —) present for comparison different facets of the Government's use of informers and undercover agents. In two cases of the set I have sustained the activity of the Government. But in this case I find it impossible to do so because the nature of the official practices evidenced here is offensive to the fair administration of justice in federal courts.

At this late date in the annals of law enforcement, it seems to me that we cannot say either that every use of informers and undercover agents is proper or, on the other hand, that no uses are. There are some situations where the law could not adequately be enforced without the employment of some guile or misrepresentation of identity. A law enforcement officer performing his official duties cannot be required always to be in uniform or to wear his badge of authority on the lapel of his civilian clothing. Nor need he be required in all situations to proclaim himself an arm of the law. It blinks the realities of sophisticated, modern-day criminal

activity and legitimate law enforcement practices to argue the contrary. However, one of the important duties of this Court is to give careful scrutiny to practices of government agents when they are challenged in cases before us, in order to insure that the protections of the Constitution are respected and to maintain the integrity of federal law enforcement.

I find these three cases which we decide today quite distinguishable from each other in this regard. Although all three involve what may be termed official deception in order to gather evidence for criminal prosecutions, the police practices reviewed are essentially different. The simplest of the three for me is *Lewis*, wherein a federal narcotics agent, having reason to believe that Lewis was a trafficker in narcotics, called him on the telephone using an assumed name and told him that a mutual friend had said Lewis sold narcotics. Lewis affirmed the nature of his occupation and invited the agent to his place of business which, as an incidental matter, turned out also to be his home. The agent went there, purchased narcotics and arranged for future dealings to occur at the same place but on a reduced-price basis. Later, a second purchase of narcotics was executed by the agent in the same manner.

In *Lewis*, then, there was no intrusion upon the privacy of the household. Nothing was heard, seen, or taken by the agent that was not a necessary part of the business transactions between him and Lewis. The purpose of the agent's visits was to buy narcotics from Lewis, and the details of their business dealings were all that concerned him. *Lewis* simply is not a case where an undercover agent invaded a place used both as a business location and a home and then, overtly or covertly, either seized something or observed or heard something unrelated to the business purpose of his visit. As we said in affirming Lewis' conviction, the principles elaborated

in *Gouled* v. *United States*, 255 U. S. 298 (1921), would protect against such overreaching. We do not endorse unconscionable activities or the use of an unreliable informer when we sustain the undercover work of the agent responsible for Lewis' conviction. Compare *Sherman* v. *United States*, 356 U. S. 369 (1958).

In the *Osborn* case, the petitioner employed Robert Vick, a police officer of Nashville, Tennessee, to investigate persons who were members of a panel from which a federal criminal jury was to be selected in a prior trial of James Hoffa in that city. Although he knew Vick's loyalty was due the police department, when he learned that Vick had a cousin on the panel he urged Vick to offer the cousin $10,000 in return for the latter's promise to vote for acquittal if selected to sit on the petit jury. Vick informed federal authorities of this proposal, and made an affidavit to that effect for the judge who was to preside at the Hoffa trial. The judge, in order to determine the truthfulness of the affidavit and to protect the integrity of the trial, authorized the equipping of Vick with a recording device to be used in further conversations with petitioner. I see nothing wrong with the Government thus verifying the truthfulness of the informer and protecting his credibility in this fashion.[1] *Lopez* v. *United States*, 373 U. S. 427 (1963). This decision in no sense supports a conclusion that unbridled use of electronic recording equipment is to be permitted in searching out crime. And it does not lend judicial sanction to wiretapping, electronic "bugging" or any of the other questionable spying practices that are used to

[1] The recording was not used here as a means to avoid calling the informer to testify. As I noted in my concurring opinion in *Lopez* (373 U. S., at 441), I would not sanction the use of a secretly made recording other than for the purposes of corroborating the testimony of a witness who can give firsthand testimony concerning the recorded conversations and who is made available for cross-examination.

invade privacy and that appear to be increasingly prevalent in our country today. Cf. *Silverman* v. *United States*, 365 U. S. 505 (1961); *Black* v. *United States*, — U. S. — (1966); *Schipani* v. *United States*, — U. S. — (1966).

But I consider both *Lewis* and *Osborn* to be materially, even fundamentally, different from this *Hoffa* case. Here, Edward Partin, a jailbird languishing in a Louisiana jail under indictments for such state and federal crimes as embezzlement, kidnapping, and manslaughter (and soon to be charged with perjury and assault), contacted federal authorities and told them he was willing to become, and would be useful as, an informer against Hoffa who was then about to be tried in the Test Fleet case. A motive for his doing this is immediately apparent—namely, his strong desire to work his way out of jail and out of his various legal entanglements with the State and Federal Governments.[2] And it is interesting

[2] One Sydney Simpson, who was Partin's cellmate at the time the latter first contacted federal agents to discuss Hoffa, has testified by affidavit as follows:

"Sometime in September, 1962, I was transferred from the Donaldsonville Parish Jail to the Baton Rouge Parish Jail. I was placed in a cell with Partin. For the first few days, Partin acted sort of brave. Then when it was clear that he was not going to get out in a hurry, he became more excited and nervous. After I had been in the same cell with Partin for about three days, Partin said, 'I know a way to get out of here. They want Hoffa more than they want me.' Partin told me that he was going to get one of the deputies to get Bill Daniels. Bill Daniels is an officer in the State of Louisiana. Partin said he wanted to talk to Daniels about Hoffa. Partin said that he was going to talk to Captain Edwards and ask him to get Daniels. A deputy, whose name is not known to me, came and took Partin from the cell. Partin remained away for several hours.

"A few days later Partin was released from the jail. From the day I first saw the deputy, until the date when Partin was released, Partin was out of the cell most of the day and sometimes part of

to note that, if this was his motive, he has been uniquely successful in satisfying it. In the four years since he first volunteered to be an informer against Hoffa he has not been prosecuted on any of the serious federal charges for which he was at that time jailed, and the state charges have apparently vanished into thin air.

Shortly after Partin made contact with the federal authorities and told them of his position in the Baton Rouge Local of the Teamster's Union and of his acquaintance with Hoffa, his bail was suddenly reduced from $50,000 to $5,000 and he was released from jail. He immediately telephoned Hoffa, who was then in New Jersey, and, by collaborating with a state law enforcement official, surreptitiously made a tape recording of the conversation. A copy of the recording was furnished to federal authorities. Again on a pretext of wanting to talk with Hoffa regarding Partin's legal difficulties, Partin telephoned Hoffa a few weeks later and succeeded in making a date to meet in Nashville where Hoffa and his attorneys were then preparing for the Test Fleet trial. Unknown to Hoffa, this call was also recorded and again federal authorities were informed as to the details.

Upon his arrival in Nashville, Partin manifested his "friendship" and made himself useful to Hoffa, thereby

---

the night. On one occasion Partin returned to the cell and said, 'It will take a few more days and we will have things straightened out, but don't worry.' Partin was taken in and out of the cell frequently each day. Partin told me during this time that he was working with Daniels and the FBI to frame Hoffa. On one occasion I asked Partin if he knew enough about Hoffa to be of any help to Daniels and the FBI, and Partin said, 'It doesn't make any difference. If I don't know, I can fix it up.'

"While we were in the cell, I asked Partin why he was doing this to Hoffa. Partin replied: 'What difference does it make? I'm thinking about myself. Aren't you thinking about yourself? I don't give a damn about Hoffa . . . .'" R. 171–172.

worming his way into Hoffa's hotel suite and becoming part and parcel of Hoffa's entourage. As the "faithful" servant and factotum of the defense camp which he became, he was in a position to overhear conversations not directed to him, many of which were between attorneys and either their client or prospective defense witnesses. Pursuant to the general instructions he received from federal authorities to report "any attempts at witness intimidation or tampering with the jury," "anything illegal," or even "anything of interest," Partin became the equivalent of a bugging device which moved with Hoffa wherever he went. Everything Partin saw or heard was reported to federal authorities and much of it was ultimately the subject matter of his testimony in this case. For his services he was well paid by the Government, both through devious and secret alimony payments to his divorced wife and, it may be inferred, by executed promises not to pursue the indictments under which he was charged at the time he became an informer.

This type of informer and the uses to which he was put in this case evidence a serious potential for undermining the integrity of the truth-finding process in the federal courts. Given the incentives and background of Partin, no conviction should be allowed to stand when based heavily on his testimony. And that is exactly the quicksand upon which these convictions rest, because without Partin, who was the principal government witness, there would probably have been no convictions here. Thus, although petitioners make their main arguments on constitutional grounds and raise serious Fourth and Sixth Amendment questions, it should not even be necessary for the Court to reach those questions. For the affront to the quality and fairness of federal law enforcement which this case presents is sufficient to require an exercise of our supervisory powers. As we

said in ordering a new trial in *Mesarosh* v. *United States*, 352 U. S. 1, 14 (1956), a federal case involving the testimony of an unsavory informer who, the Government admitted, had committed perjury in other cases:

> "This is a federal criminal case, and this Court has supervisory jurisdiction over the proceedings of the federal courts. If it has any duty to perform in this regard, it is to see that the waters of justice are not polluted. Pollution having taken place here, the condition should be remedied at the earliest opportunity.
>
> . . . . . .
>
> "The government of a strong and free nation does not need convictions based upon such testimony. It cannot afford to abide with them."

See also *McNabb* v. *United States*, 318 U. S. 332, 341 (1943).

I do not say that the Government may never use as a witness a person of dubious or even bad character. In performing its duty to prosecute crime the Government must take the witnesses as it finds them. They may be persons of good, bad, or doubtful credibility, but their testimony may be the only way to establish the facts, leaving it to the jury to determine their credibility. In this case, however, we have a totally different situation. Here the Government reaches into the jailhouse to employ a man who was himself facing indictments far more serious (and later including one for perjury) than the one confronting the man against whom he offered to inform. It employed him not for the purpose of testifying to something that had already happened, but rather for the purpose of infiltration to see if crimes would in the future be committed. The Government in its zeal even assisted him in gaining a position from which he could be a witness to the confidential relation-

ship of attorney and client engaged in the preparation of a criminal defense. And, for the dubious evidence thus obtained, the Government paid an enormous price. Certainly if a criminal defendant insinuated his informer into the prosecution's camp in this manner he would be guilty of obstructing justice. I cannot agree that what happened in this case is in keeping with the standards of justice in our federal system and I must, therefore, dissent.